RECENT CASE NOTES

ACCORD AND SATISFACTION—LIABILITY OF THE DEBTOR ON AN EXECUTORY ACCORD.—The defendant agreed to purchase certain galvanizing equipment from the plaintiff. Before the plaintiff had completed the work thereon according to the agreement, the defendant requested the cancellation of the order. The plaintiff refused, but offered to accept two thousand dollars in satisfaction of the unliquidated claim in return for the defendant's promise to pay such sum. The defendant duly accepted the plaintiff's offer but later refused to pay as agreed. The plaintiff sued on the new agreement. *Held,* that the plaintiff could recover. *Meaker Galvanizing Co. v. McInnes* (1922, Pa.) 116 Atl. 400.

In the instant case, the court dealt with the old contract as having been broken by the defendant, not as having been rescinded before breach, and therefore the new agreement was an accord. Even after bilateral contracts became enforceable, courts were reluctant to enforce bilateral accords. "Upon an accord no remedy lies." *Lynn v. Bruce* (1794, C. P.) 2 H. Bl. 317. This statement is still repeated, although it is now incorrect. *Bell v. Pitman* (1911) 143 Ky. 521, 136 S. W. 1026; Leake, *Contracts* (6th ed. 1912) 643. Even though no court has expressly repudiated this statement, the decisions are almost universally inconsistent with it. *Nash v. Armstrong* (1861) 10 C. B. (N. S.) 259; *Very v. Levy* (1851, U. S.) 13 How. 345; *Moers v. Moers* (1920) 229 N. Y. 294, 128 N. E. 202; (1920) 30 YALE LAW JOURNAL, 98. A sufficient consideration is as essential in an accord as in any other contract. *Partridge Lumber Co. v. Phelps-Burruss Lumber Co.* (1912) 91 Neb. 396, 136 N. W. 65. In an accord the determining factor is whether it was the intention of the parties that the new promise, or performance of that promise, should operate as a discharge of the pre-existing claim. An executory accord which provides that actual performance of the new agreement shall operate as a discharge will not bar an action on the old contract. *Hosler v. Hursh* (1892) 151 Pa. 415, 25 Atl. 52; (1917) 26 YALE LAW JOURNAL, 789. In such a case, the creditor could elect to sue on the accord. *Hunt v. Brown* (1888) 146 Mass. 253, 15 N. E. 587; 3 Williston, *Contracts* (1920) 3170. Where it is clearly shown, however, that the parties intended instantly to discharge the former contract, the new executory agreement is a complete defense to an action on the original claim. *Good v. Cheesman* (1831, K. B.) 2 Barn. & Adol. 328; *Nassoiy v. Tomlinson* (1896) 148 N. Y. 326, 42 N. E. 715. In the instant case, the court said that an agreement to accept a smaller sum in satisfaction of a claim for a larger sum is an accord, so far revocable as not to bar suit on the original contract until satisfied by actual and complete performance. Although this statement seems untenable, the decision is sound.

BANKS AND BANKING—GUARANTY FUND—CERTIFICATES OF DEPOSIT ISSUED BY CASHIER FOR PERSONAL BENEFIT NOT PROTECTED.—The plaintiff was a holder in due course of certificates of deposit for which no funds had been deposited, the certificates having been issued by the cashier of the bank for his personal benefit. The bank became insolvent and the plaintiff brought an action to recover the amount of the certificates from the depositors' guaranty fund. Kan. Gen. Sts. 1915, ch. 11, art. 2. *Held,* that the plaintiff could not recover. *Fourth Nat. Bank v. Wilson* (1922, Kan.) 204 Pac. 715.

Statutes establishing depositors' guaranty funds to insure bank depositors against losses are constitutional. *Noble State Bank v. Haskell* (1911) 219 U. S. 104, 31 Sup. Ct. 186; *Assaria State Bank v. Dolley* (1911) 219 U. S. 121, 31 Sup.